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INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; GERALD ARMSTRONG CORPORATION, a California corporation, SOLINA WALTON, et al., Defendants.	CASE NO. 157 680 PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S OPPOSITION TO DEFENDANT SOLINA WALTON'S DEMURRER TO COMPLAINT AND MOTION TO STRIKE DATE: December 16, 1994 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: May 18, 1995

I. INTRODUCTION

Doe Defendant Solina Walton ("Solina") wastes the time of the court and parties with a frivolous demurrer and unsupported motion to strike that have no basis in fact or law. No basis for demurrer appears on the face of the pleadings. Solina claims that she has been prejudiced by her addition as a defendant seven months before trial, but offers no evidence to support that naked assertion. In reality, her interest in the case is virtually identical to that of her husband and lawyer, Michael Walton ("Walton"), who has been a defendant since the case began, and the only thing preventing her from taking discovery is her own lawyer. The demurrer must be overruled, and the motion to strike denied.

II. STATEMENT OF FACTS

This fraudulent conveyance action is presently set for trial on May 18, 1995 [Ex. 2 to Ex. A, Declaration of Laurie Bartilson "Bartilson Dec.," Order]. In September, 1994, plaintiff Church of Scientology International ("CSI") named Solina, wife of defendant Michael Walton as Doe Defendant No. 1. [Ex. 2 to Bartilson Dec.]

Solina is the wife of defendant Walton, who has been a party to this action since its inception. [Bartilson Dec., ¶ 4.] Walton appears as his own attorney, and has now appeared as the attorney for his wife Solina as well. [Id.] Although she was named as defendant in September, Solina made no effort to respond to the complaint in any way until November 14, 1994, when she filed this motion. She set the demurrer and motion for hearing 6 weeks from the date of filing.

This fraudulent conveyance action was brought in July, 1993, against Walton because he received assets, including real property, located at 707 Fawn Drive (the "Property"), from defendant Gerald Armstrong without providing Armstrong adequate compensation. [Complaint, ¶ 31.] CSI's claims against Armstrong for breach of contract have now been consolidated into this action. The theory of CSI's fraudulent conveyance action is that Armstrong conveyed the assets to Walton and others in order to render himself "judgment-proof." [Complaint, passim.] When CSI undertook to secure its interest in the Property via lis pendens, it learned for the first time that Solina claimed an interest in the Property. [Bartilson Dec., ¶ 5.]

During discovery in this action, Walton took 3 depositions. [Id., ¶ 6.] One deposition was of CSI, and the others were of other persons to whom Armstrong had fraudulently conveyed assets. The total time which he expended asking questions during these depositions was approximately eight hours. [Id.] In addition, Walton propounded 1 set of requests for the production of documents to plaintiff CSI. [Id.] This comprised all of the discovery taken by Walton. All of Walton's discovery was conducted in less than two months, from July 11, 1994 to September 2, 1994. [Id., ¶ 7.] He did it all himself, as a pro se litigant. [Id.]

Solina is Walton's wife, and has been ever since this action was initiated. She and Walton reside together in the house located on the Property. [Id., ¶ 4.]

During 1994, CSI attempted repeatedly to enter into settlement negotiations with both Armstrong and Walton. When

neither Armstrong nor Walton would make any serious effort to discuss the issues presented by these pleadings, it became clear to counsel for CSI that the breach of contract case and the fraudulent conveyance action were both likely to proceed to trial. [Id., ¶ 8.] Serving Solina, who claimed an ownership interest in the Property which she states she received after Armstrong's conveyance to Walton, was a necessary adjunct to ensuring that a trial in this matter would not result in yet another uncollectable judgment. [Id., ¶ 9.] At the time Solina was served, CSI and its attorneys reasonably believed that the then-pending trial date would be continued, allowing Solina ample time in which to conduct any discovery she felt was necessary beyond the discovery taken by her husband. CSI's belief was, indeed, well-grounded: on September 29, 1994, this Court continued the trial to May 18, 1995.

Shortly after Walton served plaintiff with Solina's demurrer, CSI's counsel wrote to Walton and offered to stipulate to an extension of the discovery cut-off, pursuant to C.C.P. § 2034(e), until 30 days prior to the new trial date. [Ex. 3 to Bartilson Dec.] Walton responded that, "I will oppose any motion to reopen discovery in the Marin action." [Id., Ex. 4.] His protestations herein that Solina is prejudiced by an inability to take discovery while simultaneously refusing to stipulate to permit her to take discovery are unreasonable, and demonstrate bad faith.

Solina's sole connection to this litigation is that she claims an ownership interest, with Walton, in some or all of the property which Armstrong conveyed to Walton in 1990. She took

her interest, if any exists, from Walton. [Id., ¶ 12.] Thus her defenses to this litigation are derivative from, and identical to, those of Walton.[1]

III. SOLINA IS NOT ENTITLED TO DEMURRER ON THE BASIS OF LACHES

Solina correctly states that, "laches may properly be raised by a general demurrer," citing Stafford v. Ballinger (1962) 199 Cal.App.2d 289, 18 Cal.Rptr. 568, 572 (emphasis supplied). What she does not recite is the remainder of the sentence from Stafford, which places a condition on such a demurrer: "where the facts showing laches appear on the face of the complaint." Id. (emphasis supplied).

As articulated by the court in Stafford, the elements of laches are: "(1) an omission to assert a right; (2) a delay in the assertion of the right for some appreciable period; and (3) circumstances which would cause prejudice to an adverse party if assertion of the right is permitted." Id. In Stafford, all of these elements appeared on the face of the complaint: the plaintiff had waited 17 years before commencing the action, and the complaint itself recited intervening events which had clearly prejudiced plaintiff, such as intervening sales of the property at issue, the death of the seller and his grantee, etc. Id. In such a case the court had no trouble granting a demurrer based on laches.

The situation is quite different here. No untimeliness

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[1] The only exception, of course, would be if she denied that she was claiming any ownership interest in the Property. That does not seem likely given her statements concerning that ownership in her Moving Papers. In any case, if she were to raise that defense, she would have no need to take discovery in order to present it.

appears on the face of the complaint. Code of Civil Procedure Section 474 specifically exists to enable a plaintiff who is ignorant of the identities of all of the defendants to file his complaint before the action is barred by the statute of limitations, and add defendants. Indeed,

> There is a strong policy in favor of litigating cases on their merits, and the California courts have been very liberal in permitting the amendment of pleadings to bring in a defendant previously sued by ficticious name. So long as the amended pleading relates to the same general set of facts as the original complaint, a defendant sued by ficticious name and later brought in by amendment substituting his true name is considered a party to the action from its commencement for purposes of the statute of limitations.

Barrows v. American Motors Corp. (1983) 144 Cal.App.3d 1, 7, 192 Cal.Rptr. 380, 382 (citations omitted). Pursuant to Code of Civil Procedure Section 583.210, CSI had three years after commencing the action in which to name and serve Solina. Within 14 months of filing the complaint, CSI received permission for filing and filed the Doe amendment naming Solina. This was timely on its face.

Nor does any prejudice to Solina appear in the complaint. The prejudice which she claims in her moving papers exists, if at all, completely beyond the pleadings.

Isakoolian v. Issacoulian (1966) 246 Cal.App.2d 225, 54 Cal.Rptr. 543 is squarely on point. The complaint in that action sought to establish a constructive trust on the proceeds from the sale of an interest in real property. In demurring, the defendant argued that the plaintiff had "inexcusably and unreasonably delayed the filing" of the complaint, that "defendant for all those years [had] no idea as to any claim

whatsoever on the part of the plaintiff," and that defendant would not have sold her interest had she known of plaintiff's claim. The appellate court held that these allegations by defendant "are all matters beyond the allegations of the complaint, and should not and could not be considered by the court below in ruling on the demurrer." 54 Cal.Rptr. at 546. Looking at the face of the complaint, the court found that the claim stated arose in 1964, when the oral trust was repudiated by the trustee, rather than in 1946, when the oral trust was allegedly created. No prejudice was shown to the defendant by the allegations of the complaint, and the judgment for defendant was reversed.

So, here, the face of the complaint, as amended, shows no unreasonable delay or prejudice to Solina. The complaint was first filed in July, 1993. Plaintiff had a statutory three years in which to amend and serve it. It did so in 14 months. Solina's claims of "prejudice," like those of the defendant in Issakoolian, "are all matters beyond the allegations of the complaint, and should not and could not be considered by the court . . . in ruling on the demurrer." 54 Cal.Rptr. at 546.

Nor do the Section 474 cases which Solina cites provide her with any additional support for demurrer. In Barrows, supra, the defendant objected that the plaintiff had waited a year before making the doe amendment. The trial court sustained a demurrer, but the appellate court reversed, stating that a demurrer could not be sustained without a showing of specific prejudice. In Sorbeck and Associates v. B & R Investments No. 24 (1990) 215 Cal.App.3d 861, 264 Cal.Rptr. 156, the issue arose not on

demurrer, but at trial. The plaintiff in that case used Section 474 to add a defendant in a mechanic's lien action, on which the statute of limitations is 90 days. The plaintiff filed the doe amendment a year after it learned of the new defendant's interest. The trial court granted defendant judgment after the plaintiff opened its case, on the theory that the plaintiff should have filed within 90 days of learning the identity of the defendant. The appellate court reversed, finding that absent a showing of prejudice to the defendant, the plaintiff had 3 years, not 90 days, in which to file the amendment.

So, here, the delay was not unreasonable, and no prejudice appears from on the face of the complaint. Demurrer must be overruled.

IV. SOLINA'S UNSUPPORTED MOTION TO STRIKE MUST BE DENIED

Solina also asks the court to simply strike CSI's complaint against her, but offers no legal or factual support for this motion. None of the cases cited by Solina (and all of them are discussed above) suggest that a court may strike a complaint because the defendant makes allegations in memorandum of law to the effect that she has suffered prejudice by having the complaint filed against her, nor has CSI been able to locate any authority to support such a position.

In her memorandum, Solina makes a number of general statements, unsupported by any evidence, of prejudice that she claims she has suffered. She states that discovery was cut-off before the amendment was filed, thus preventing her from obtaining discovery; that even if discovery were re-opened, she was somehow harmed because she did not have a prior opportunity

to participate in discovery; that it is unlikely that she would be able to prepare a defense in time for the May 18, 1994 trial date; and that by naming her now, CSI has somehow "doubled" the cost of litigation to her family. These general statements are not supported by so much as a declaration from either Walton or Solina. They make no specific claim as to **any** discovery which Solina desires to take that she is or would be prevented from taking, **any** discovery that was already taken by her husband, acting on his own behalf, which would have been any different if he had been taking it as her attorney as well, or, indeed, made **any** showing that Solina, in truth, has a need to take any further discovery **at all.**

In contrast, CSI has shown these general arguments to be a sham, and a fraud on the court. Solina's liability is entirely derivative from Walton's liability; their interests could not be more similar. [Bartilson Dec. ¶ 12.] Further, the same attorney represents them both, and will, presumably, identically pursue their identical interests. [Id., ¶ 4.] Walton was able to complete his discovery in this action in less than two months; indeed, he took no discovery at all prior to July, 1994. [Id., ¶ 7.] There is no reason to suppose that Solina would require any more time to take discovery; indeed, CSI doubts that Solina has a need to take any discovery at all. Should she require discovery, however, there is no impediment to her taking that discovery: CSI has offered to stipulate, pursuant to C.C.P. §2034(e) to an extension of the discovery cut-off to April 18, 1995. A simple stipulation would remove any "prejudice" which Solina claims. Her refusal to so stipulate demonstrates

eloquently that her claimed need for discovery is a sham and a pose to play to the sympathies of the court.

Solina's mere assertions, without proof, that she is somehow limited or strained in her discovery efforts do not support a motion to strike CSI's complaint against her. More over, each of her protestations, even if it were true, would be entirely cured by CSI's offer to extend the discovery cut off. No portion of the complaint is irrelevant, false or improper (C.C.P. §435(b)(1)(a)), and no portion of it fails to conform to California law (C.C.P. §435(b)(1)(b)). Solina's motion to strike must be denied.

V. CONCLUSION

Defendant Solina Walton has filed a demurrer and motion to strike that are supported by neither fact nor law. CSI's amendment adding her as a doe defendant was timely, and Solina has demonstrated no prejudice from the timing of CSI's filing. Even assuming arguendo that she had put forth some evidence of a need to take discovery beyond the discovery taken by Walton -- her co-defendant, husband and attorney -- CSI has already offered to stipulate to an extension of the discovery cut-off, commensurate with the new trial date. She has refused CSI's offer. Her claims of prejudice, and this motion, are a sham, and

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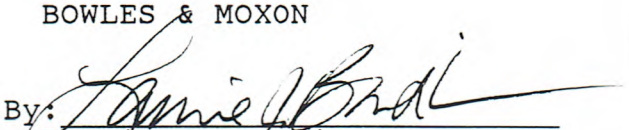
a fraud upon the court. Demurrer must be overruled, and the motion to strike denied.

Dated: December 9, 1994

Respectfully submitted,

BOWLES & MOXON

By: 
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PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 235 Montgomery Street, Suite 450, San Francisco, California.

On December 9, 1994, I served the attached **PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S OPPOSITION TO DEFENDANT SOLINA WALTON'S DEMURRER TO COMPLAINT AND MOTION TO STRIKE** and **DECLARATION OF LAURIE J. BARTILSON IN SUPPORT OF PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S OPPOSITION TO DEFENDANT SOLINA WALTON'S DEMURRER TO COMPLAINT AND MOTION TO STRIKE** on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Ford Greene, Esq.
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94979

Michael Walton
707 Fawn Dr.
San Anselmo, CA 94960

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on December 9, 1994

Colleen Y. Palmer

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